IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

1. Kailash Chand Vs. State of Rajasthan
(D.B. Criminal Appeal No.850/2001)

2. State of Rajasthan Vs. Kailash Chand
(D.B. Criminal Appeal No.263/2002)

D. B. Criminal Appeals under Sec.374 (2) Cr.P.C. against the judgment dated 12-9-2001 in Sessions Case No.14/2001 passed by Shri K.C.Jat, RHJS, Additional Sessions Judge (Fast Track) Gangapur City.

Date of Judgment: May 02, 2007.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA
HON'BLE MR. JUSTICE GUMAN SINGH

Mr. R.S.Agrawal] for the appellant and accused respondent.
Mr. RDS Naruka]

Mr. M.L.Goyal, Public Prosecutor for the State.

BY THE COURT: (PER HON'BLE Shiv Kumar Sharma,J.)

Kailash, the appellants herein, was put to trial before the learned Additional Sessions Judge (Fast Track) Gangapur City. Learned Judge vide judgment dated September 12, 2001 convicted and sentenced the appellant under section 304 part II IPC to suffer rigorous imprisonment for six years and fine of Rs.3000/-, in default to further suffer simple imprisonment for six months. Being aggrieved by this finding Kailash preferred appeal No.850/2001. On the other hand the State of Rajasthan filed appeal No.263/2002 seeking conviction of Kailash under section 302 IPC.

2. Police Station Gangapur City registered a case on January 3,

2001 under sections 307 and 341 IPC against Kailash on the basis of Parcha bayan (Ex.P-18) of injured Halka, according to whom Kailash inflicted knife blows on his chest and neck. On the death of Halka Section 302 IPC was added. After completion of investigation charge sheet was filed. In due course the case came up for trial before the learned Additional Sessions Judge (Fast Track) Gangapur City. Charge under section 302 IPC was framed against the accused, who denied the charge and claimed trial. The prosecution in support of its case examined as may as 13 witnesses. In the explanation under Sec.313 Cr.P.C., the appellant claimed innocence. One witness in defence was examined. Learned trial Judge on hearing final submissions convicted and sentenced the appellant as indicated herein above.

3. Having scanned the material on record we notice that as per injury report (Ex.P-16) Halka received one stab wound measuring 2½ x ½cm on left side of neck. The cause of death as per the testimony of Dr. P.C.Vyas (Pw.13), who performed autopsy on the dead body, was haemorrhage due to injury to blood vessel. Post Mortem Report (Ex.P-22) was drawn after autopsy.

4. A look at the material on record demonstrates that after the incident occurred on January 3, 2001 Halka was immediately taken to the hospital but he died due to excessive hemorrhage. It also appears that there was no enmity between the deceased and accused. Babu Lal (Pw.2) in his cross examination admitted that Halka and Kailash were close friends.

5. We have thoughtfully considered the submissions advanced

before us. On analysing the evidence adduced at the trial we find that the origin and genesis of the occurrence although could not be brought on record, it is however established that Kailash inflicted one blow on left side of neck of deceased and did not repeat the same. The incident occurred all of sudden and on a spur of moment and Kailash did not act in cruel or unusual manner. He did not take undue advantage of the situation. It can however be presumed that Kailash had knowledge that the blow inflicted by him was likely to cause death of Halka, even though he had no intention of causing death or such bodily injury as is likely to cause death.

6. Contention of learned Public Prosecutor to convict and sentence Kailash under section 302 IPC cannot be accepted in the facts and circumstances of the case. The case of accused Kailash comes within the purview of Exception IV to Section 300 IPC and he was rightly held guilty under section 304 Part II IPC.

7. For these reasons we find no merit in the instant appeals and the same stand accordingly dismissed.

(Guman Singh),J. (Shiv Kumar Sharma)J.

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